IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.390 of 2004 (S/B)

Chandra Kant Saklani S/o Late Sh. D.R. Saklani,
Presently Posted as Assistant Resident Engineer,
U.P. Rajkiya Nirman Nigam Ltd.
Dwarahat, District Almora,

....Petitioner

Vs

1. Managing Director, U.P. Rajkiya Nirman Nigam Ltd., Vishwesheraiya Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow

2. Manager (Recruitment) U.P. Rajkiya Nirman Nigam Ltd., Vishwesheraiya Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow

3. State of U.P. through Secretary, Public Works Deptt., U.P. Government, Lucknow

.....Respondents

Dated: May 19, 2006

Sri S.N. Babulkar, Sr. Advocate assisted by Sri Prabhakar Joshi, learned counsel for the petitioner
Sri A.K. Joshi, learned counsel for the respondents

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

By means of this writ petition, the petitioner has prayed for writ of mandamus commanding the respondents to consider the promotion of the petitioner as Resident Engineer (Civil) in accordance with the provisions of Rule 19(2) taking into account the entire length of service of the petitioner as Assistant Resident Engineer (Civil) with all consequential benefits and further a writ of mandamus commanding the respondents to treat the petitioner similarly as three persons similarly situated vide order dated 20.02.2003 passed by Managing Director of Respondent Corporation and re-fix the seniority of the petitioner w.e.f. the date of the initial appointment of the petitioner as Assistant Resident Engineer (Civil) vide order dated 10.3.1987.

2. The petitioner is an Assistant Resident Engineer in U.P. Rajkiya Nirman Nigam Ltd. and is resident of State of Uttaranchal. The U.P. Rajkiya re-organization of the State of U.P. by virtue of U.P Re-organization Act, 2000. The petitioner was appointed as Assistant Resident Engineer (Civil) on ad-hoc basis vide letter dated 10.3.1987. The date of regularization of the petitioner's service on the post of Assistant Resident Engineer (Civil) is 21.3.1991. The petitioner has filed this writ petition seeking a writ of mandamus commanding the respondents to re-fix his seniority after adding the period of service rendered by him on ad-hoc service. Rule 4 of the Rules known as Rajkiya Nirman Nigam Ltd. (Engineers & Architect) Sewa Niyamawali, which reads as under:-

> *4. The seniority shall be reckoned from the date from which the employee has joined the regular service of the corporation and no benefit shall be given for the services rendered as adhoc/muster roll/daily wage employee.*

3. Learned counsel for the petitioner submits that these Rules were amended in the year 1994 while Rule 4 of the Rules as it stood prior to this amendment. This Rule was substituted in place of old Rule 4 which reads as under:-

> *"4. The persons appointed on the basis of selection in a particular year of recruitment shall be senior to the persons appointed on the basis of subsequent selections."*

4. Learned counsel for the petitioner further submitted that since the petitioner was appointed on 10.3.1987 on ad-hoc basis and his services were regularized in the year 1991, therefore, his services ought to have been determined according to the old Rules prior

to its amendment. Even if the seniority of the petitioner is to be determined on the basis of old Rules, the petitioner cannot be given the benefit of ad-hoc service rendered by him from 1987 to 1991 as according to Rule 4 of the Rules, the petitioner was not appointed on the basis of any selection. The petitioner was an apprentice and after completion of period of one year, he was appointed as Assistant Resident Engineer (Civil) purely in ad-hoc manner and the post question was never advertised and no selection was held after his appointment. Therefore, the services of the petitioner could not be determined adding the ad-hoc service rendered by him according to the provisions of old Rule 4 of the Rules.

5. Further contention of learned counsel for the petitioner is that the persons namely Sri A.K. Pandey, Sri A.K. Shukla and Sri S.K. Shukla who were appointed on ad-hoc basis in the year 1985 were regularized on 21.3.1991 i.e. the same day on which the petitioner's services were regularized.

6. These persons regularization have been made with retrospective effect. After modification of the order dated 21.3.1991, they have been given the regularization w.e.f. 2.6.1988 so that their ad-hoc services may be counted from the year 1988 towards their seniority. This factual position has been clarified in Para 7 of the counter affidavit.

7. The decision to regularize the appointees was taken in the year 1988 and the Selection Committee was constituted in the same year i.e. 1988 and cut-off date for considering the candidates who were appointed on or before 21.1.1986 was earmarked for regularization in the year 1988. Sri A.K. Pandey, Sri A.K. Shukla and Sri S.K. Shukla were the appointees of the year 1985 i.e. prior to the cut-off date i.e. 21.1.1986. Their cases were left over in the selection of 1988 but the Selection Committee

regularized them in the year 1991. Since they were entitled to be regularized in the year 1988 selection, therefore, they have been given the regularization w.e.f. 1988, therefore, we do not find any force in the contention of learned counsel for the petitioner.

8. The Rule specifically provides that for the purpose of determining the seniority, ad-hoc service shall not be counted and it is not disputed that the petitioner was appointed on ad-hoc basis merely be moving an application. Even for ad-hoc appointment, the posts were not advertised and no selection was held, therefore, the period of the appointment of the petitioner before the date of his regularization will not be counted for the purpose of seniority.

9. The third contention of learned counsel for the petitioner is that his ad-hoc services have been counted by the respondents for the purpose of granting him time scale. The Board's circular by which the time-scale has been granted to the petitioner provides that 8 years total service is to be counted for grant of time scale. In case of the petitioner, this included ad-hoc service also. There is a difference between the total service rendered and substantive service rendered. For the purpose of determining the seniority, only substantive service rendered is taken into account while for grant of time-scale, the total service that may include ad-hoc service could be counted in terms of the Board's Circular. Therefore, this argument of learned counsel for the petitioner is also rejected.

10. Thus, we do not find any merit in the writ petition. The writ petition is devoid of merit and is hereby dismissed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang